

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 99-0573P**

**Income Tax**

**Calendar Years 1994, 1995, 1996, & 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

The negligence penalty was assessed on an income tax assessment resulting from a Department audit for the calendar years 1994, 1995, 1996, & 1997.

The taxpayer is the franchiser for a national fast food restaurant. The taxpayer owns the real estate component of all non-franchised restaurants. The company finds and develops restaurant locations, finds and develops franchise opportunities, and provides promotional, administrative, and operational support services for all components of the fast food restaurant chain.

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**DISCUSSION**

The taxpayer argues the negligence penalty should be waived as the error is nominal and the error was unintentional. The taxpayer points out the error was 4.7% of the total tax liability paid by the taxpayer with the returns originally filed with the state. The Department states the error is a repeat error from a prior audit.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to the negligence penalty. As such, the Department denies the taxpayer's penalty protest.

### **FINDING**

The taxpayer's penalty protest is denied.